IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2374 OF 2005

M/s.A.S. Moloobhoy & Sons ...Petitioner
V/s.
The Board of Trustees of the
Port of Bombay & Anr. ...Respondents

Mr.G.V. Pochkhanwalla i/b. Mr.Vinod Juwale for the Petitioner.
Mr.U.J. Makhija i/b. M/s.Mulla & Mulla & Craigie Blunt & Caroe for the Respondents.

CORAM : V.M. KANADE, J.

DATED : JUNE 4, 2007

P.C. :-

1. Rule. Rule is made returnable forthwith. Respondents waive service.

2. Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

3. By this petition, the petitioner firm is challenging the Show Cause Notice dated 6.11.2004 and the order dated 12.7.2005 which is passed by the respondents whereby the petitioner firm has been blacklisted and the ban is imposed by the Bombay Port Trust on the said firm for a period of three years as a

result of which the petitioner, therefore, will not be in a position to have business dealings with the Bombay Port Trust.

4. Brief facts which are relevant for the purpose of deciding this petition are as under :-

5. The petitioner is a partnership firm and is carrying on business for the past more than 100 years as specialized suppliers and service providers catering to the needs of the marine industry.

6. It is the case of the petitioner is that respondent no.1 had expressed its intention of getting their Gyro Compass repaired. Accordingly, the petitioner firm checked the existing Gyro Compass and thereafter, they were informed that respondent no.1 intended to replace the existing Gyro Compass. Accordingly, the correspondence was made between the petitioner firm and respondent no.1. There was some dispute about the Gyro Compass installed by the petitioner. According to the respondent, Gyro Compass

which was installed was not new as claimed by the petitioner firm and accordingly, respondent permitted the petitioner to remove the said Gyro Compass. Subsequently, again a request was made to install a new Gyro Compass which request was accepted by the petitioner and again new Gyro Compass was installed. Thereafter, the respondent made a complaint to the petitioner that the Gyro Compass which was installed was not new and it was the same Gyro Compass which was removed earlier by the petitioner. In this context, a Show Cause Notice was issued by respondent no.1 to the petitioner on 6.11.2004 by which the petitioner firm was asked to show cause why action of blacklisting the firm should not be taken. The petitioner gave a reply to the said Show Cause Notice by letter dated 18.11.2004 and gave their explanation to the Show Cause Notice which was issued by respondent no.1. Respondent no.1 then passed the impugned order blacklisting the petitioner firm for having business dealings with respondent no.1. Before passing the said order, one more letter was addressed to the petitioner informing their failure to comply with the requirements as given by the petitioner

in their offer dated 20.2.2004.

7. The learned Counsel for the petitioner has submitted that respondent no.1 was aware that the Gyro Compass which was to be installed was not new and that entire action of installation of the said Gyro Compass was at the instance of respondent no.1. He submitted that therefore, there was no lapse on their part and they have not committed the breach of the conditions of contract. He thereafter submitted that the impugned order dated 12.7.2005 was obviously passed without giving any hearing to the petitioner and therefore, there was a breach of principles of natural justice. He relied on the judgment of the Apex Court in the case of **Canara Bank V/s. V.K. Awasthy, reported in (2005) 6 SCC 321.** He submitted that on this count also, the order was liable to be set aside.

8. Mr.Makhija, learned Counsel appearing on behalf of the respondents submitted that the Show Cause Notice had been issued to the petitioner and the petitioner had given their reply to the said Show Cause Notice. He

invited my attention to the reply given by the petitioner dated 18.11.2004. He submitted that in the said reply, the petitioner had accepted that there was lapse on their part and asked respondent no.1 to condone the said lapse. He submitted that before passing the impugned order, another letter has been issued to the petitioner informing about the previous lapse made by the petitioner. Mr.Makhija submitted that in view of its admission of the lapse on the part of the petitioner, there was no question of giving any further hearing and there was no breach of principles of natural justice.

9. In my view, after having gone through the Show Cause Notice and the reply which was given by the petitioner, the respondent ought to have given a personal hearing to the petitioner before blacklisting them. It is well settled position in law that any order which is likely to have an adverse consequence, should be passed only after giving a personal hearing to the parties who are likely to be affected by the said order. The ratio of the said judgment in the case of **Canara**

Bank would squarely apply to the facts of the present case. The impugned order, therefore, is liable to be set aside on this count.

10. Accordingly, Writ Petition is allowed. The impugned order dated 12.7.2005 is set aside and quashed. The respondents shall give personal hearing to the petitioner and thereafter, take decision in accordance with law.

11. Rule is made absolute in the above terms. Writ petition is disposed of accordingly.

(V.M. KANADE, J.)